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COMMISSION ON HUMAN RIGHTS
Fiftieth session
Agenda item 10

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Argentina*, Belgium*, Canada, Finland, France, Germany, Hungary, Latvia*, Norway*, Poland, Portugal*, Russian Federation, Rwanda*, Senegal*, Slovenia*, and Switzerland*: draft resolution

Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers

The Commission on Human Rights,

Guided by articles 7, 8, 10 and 11 of the Universal Declaration of Human Rights and articles 2, 4 and 26 of the International Covenant on Civil and Political Rights,

Convinced that an independent and impartial judiciary and an independent legal profession are essential prerequisites for the protection of human rights and for ensuring that there is no discrimination in the administration of justice,

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* In accordance with rule 69, paragraph 3, of the rules of procedure of the functional commissions of the Economic and Social Council.

Bearing in mind the Vienna Declaration and Programme of Action (A/CONF.157/23), in particular paragraph 27 of part I and paragraphs 88, 90 and 95 of part II,

Recalling it resolution 1989/32 of 6 March 1989, 1990/33 of 2 March 1990, 1991/39 of 5 March 1991, 1992/33 of 28 February 1992 and 1993/44 of 5 March 1993,

Recalling also General Assembly resolution 45/166 of 18 December 1990, in which the Assembly welcomed the Basic Principles on the Role of Lawyers and the Guidelines on the Role of Prosecutors adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and invited Governments to respect them and to take them into account within the framework of their national legislation and practice,

Bearing in mind the principles contained in the draft Declaration on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (E/CN.4/Sub.2/1988/20/Add.1 and Add.1/Corr.1), prepared by Mr. L.M. Singhi, the importance of which was noted by the Commission on Human Rights, in its resolution 1989/32 of 6 March 1989,

Noting on the one hand the increasingly frequent attacks on their independence suffered by judges, lawyers and court officers, and on the other hand the link between the weakening of safeguards for the judiciary and the gravity of violations of human rights,

1. Welcomes the final report on the independence of the judiciary and the protection of practising lawyers (E/CN.4/Sub.2/1993/25 and Add.1), prepared by Mr. Louis Joinet, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities;

2. Endorses the recommendation of the Sub-Commission, as contained in its resolution 1993/39 of 26 August 1993, to create a monitoring mechanism to follow up the question of the independence and impartiality of the judiciary, particularly with regard to judges and lawyers, as well as court officers, and the nature of problems liable to attack this independence and impartiality;

3. Requests the Chairman of the Commission to appoint, for a period of three years, after consultation with the other members of the Bureau, a special rapporteur whose mandate will consist of the following tasks:

(a) To submit any allegations transmitted to the special rapporteur to adversarial examination;

(b) To identify and record not only attacks on the independence of the judiciary, lawyers and court officers but also progress achieved in protecting and enhancing such independence and make proposals for technical assistance programmes and advisory services to the States concerned;

(c) To study, in view of their topicality and importance, for the purpose of making proposals, certain questions of principle, the aim being to protect and enhance the independence of the judiciary and lawyers;

4. Urges all Governments to assist the special rapporteur in the discharge of his or her mandate and to transmit to him or her all the information requested;

5. Requests the special rapporteur, starting with the fifty-first session, to submit a report on the activities connected with his or her mandate;

6. Requests the Secretary-General, within the limits of the resources of the United Nations, to provide the special rapporteur with any assistance needed for the discharge of his or her mandate;

7. Decides to consider this question at its fifty-first session;

8. Recommends the following draft decision to the Economic and Social Council for adoption:

"The Economic and Social Council,

Taking note of Commission on Human Rights resolution 1994/... of ... 1994, endorses the decision of the Commission to confirm the proposal of the Sub-Commission to create a monitoring mechanism to follow up the question of the independence and impartiality of the judiciary, particularly with regard to judges and lawyers, as well as court officers, and the nature of problems liable to attack this independence and impartiality, and recommends that this take the form of a special rapporteur whose mandate will consist of the following tasks:

(a) To submit any allegations transmitted to the Special Rapporteur to adversarial examination;

(b) To identify and record not only attacks on the independence of the judiciary, lawyers and court officers but also progress achieved in

protecting and enhancing such independence and make proposals for technical assistance programmes and services when they are requested by the State concerned;

(c) To study, in view of their importance and topicality, for the purpose of making proposals, certain questions of principle, the aim being to protect and enhance the independence of the judiciary and lawyers;

The Council also approves the request of the Commission to the Secretary-General to provide the special rapporteur with all the assistance necessary for the completion of his or her task."

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